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10-31-01
MA

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOHN RICHARD JAE,

Plaintiff

v.

SUPERINTENDENT DRAGOVICH,
OFFICER VALENTINE, OFFICER
ZIMMERMAN, OFFICER TAYLOR
OFFICER NOVAK, OFFICER NEY
and OFFICER SWIFT,

Defendants

CIVIL NO. 1:00-CV-2123

(Judge Rambo)

(Magistrate Judge Smyser)

FILED
HARRISBURG, PA

OCT 31 2001

MARY E. D'ANDREA, CLERK
Per MA
Deputy Clerk

ORDER

Before the court is a report and recommendation from the magistrate judge. The magistrate judge recommended that Defendants' motion to dismiss be granted and that Plaintiff's complaint be dismissed without prejudice. The basis for the recommendation is that Plaintiff failed to exhaust his administrative remedies. Plaintiff filed objections to the report and recommendation.

Plaintiff contends that the grievance he filed concerning the claims in this case was returned to him unprocessed. He claims that to now attempt to grieve would be futile and, therefore, he has exhausted his administrative remedies.

As the magistrate judge and the Defendants point out, Plaintiff should have either appealed the return of his grievance or submitted another corrected grievance. These remedies were available to Plaintiff but he failed to take advantage of them.

For the above reasons, **IT IS HEREBY ORDERED THAT:**

- 1) The court adopts the report and recommendation of Magistrate Judge Smyser.

2) Defendants' motion to dismiss is granted.

3) The complaint is dismissed for Plaintiff's failure to exhaust administrative remedies.

4) It is certified that any appeal from this order will be deemed frivolous and not taken in good faith.


SYLVIA H. RAMBO
United States District Judge

Dated: October 31, 2001.

UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

* * MAILING CERTIFICATE OF CLERK * *

Re: 1:00-cv-02123 Jae v. Dragovich

True and correct copies of the attached were mailed by the clerk
to the following:

John Richard Jae #BQ-3219
SCI-GREENE
175 Progress Drive
Waynesburg, PA 15370

Michael L. Harvey, Esq.
Office of Attorney General
Strawberry Square
15th Floor
Harrisburg, PA 17120

cc:

Judge	(X)	Rambo	()	Pro Se Law Clerk
Magistrate Judge	(X)	Smyser	()	INS
U.S. Marshal	()		()	Jury Clerk
Probation	()			
U.S. Attorney	()			
Atty. for Deft.	()			
Defendant	()			
Warden	()			
Bureau of Prisons	()			
Ct Reporter	()			
Ctroom Deputy	()			
Orig-Security	(X)			
Federal Public Defender	()			
Bankruptcy Court	()			
Other _____	()			

MARY E. D'ANDREA, Clerk

DATE: October 31st, 2001

BY:


Deputy Clerk